A

ARENA TEGAR SDN BHD v. PENTADBIR TANAH DAERAH JOHOR BAHRU & ANOR

HIGH COURT MALAYA, JOHOR BAHRU
CHOO KAH SING JC
[CIVIL SUIT NO: JA-22NCVC-190-10-2016]
12 JUNE 2017

B

LAND LAW: *Acquisition of land – Compensation – Due date for payment of compensation – Dispute as to person entitled to compensation – Land Administrator made aware of dispute – Land Administrator applied to deposit compensation into court after due date – Whether Land Administrator delayed in making payment of compensation – Whether Land Administrator liable to pay late payment charges – Land Acquisition Act 1960, ss. 22, 29(1)(c), 29(2), 32, 32(1) and 32(1C)*

C

This case concerned a late payment charges claim pursuant to s. 32 of the Land Acquisition Act 1960 ('LAA'). The first defendant carried out a land acquisition exercise sometime in 2005 involving a piece of land in Johor Bahru. On 19 August 2015, an enquiry was held at the Johor Bahru land office to determine the amount of compensation. Pursuant to s. 16 of the LAA, a notice in Form H was issued to and served on one Zainal Samad ('Zainal') on the same day the enquiry ended. The notice in Form K, to inform the owner the actual date of taking possession of the scheduled land pursuant to s. 22 of the LAA, was issued and the date of taking possession was on 20 November 2011. The plaintiff, *vide* a letter dated 10 September 2015, requested the first defendant to withhold payment of the compensation amount to Zainal. The plaintiff asserted that it was the rightful owner of the land, as the plaintiff had purchased the land from Zainal on 11 May 2015 and the relevant authority's consent to transfer the ownership of the land was obtained on 7 September 2015. Further, pursuant to a civil suit, the plaintiff and Zainal entered into a consent judgment wherein it was agreed, *inter alia*, that the compensation amount was to be paid to the plaintiff's solicitors by the Land Administrator within 30 days from the date of consent judgment. The plaintiff subsequently obtained an order for the compensation amount which had been deposited into the court pursuant to s. 29(1)(c) of the LAA to be withdrawn and paid to the plaintiff's solicitors. However, it was subsequently discovered that the compensation amount was not deposited with the court, neither was it paid to Zainal. The compensation amount was finally paid to the plaintiff on 24 June 2016. The plaintiff's contention was that the first defendant ought to have deposited the compensation amount with the court upon being made aware that there was a dispute over the entitlement of the compensation amount. The first defendant had failed to do so and therefore, the first defendant was liable to pay late payment charges as stipulated in s. 32 of the LAA.

D

E

F

G

H

I

Held (allowing plaintiff's claim with no order as to costs):

(1) The chief words in s. 32 of the LAA lie within the sentence '... the Land Administrator shall pay the amount awarded with late payment charges ...'. The word 'shall' connotes a statutory and obligatory duty. The provision imposes on the Land Administrator a statutory duty to pay not just the amount awarded, but also to pay the late payment charges in the event either one of the two scenarios was applicable: (i) when the Land Administrator fails to pay the compensation award to the entitled person on or before the due date; and (ii) when the Land Administrator fails to deposit the compensation award with the court on or before the due date. (paras 23 & 24)

(2) Section 29 of the Act explicitly states 'as soon as may be' after the service of Form H, the payment of the amount awarded has to be made to the person entitled. In the event the Land Administrator cannot determine who the entitled person is, then the Land Administrator is required under s. 29(2) of the LAA to apply to the Registrar of the court to deposit the awarded amount with the court. There is no time frame mentioned in the provision for the Land Administrator to apply to the court to deposit the awarded amount with the court. However, reading ss. 29(2), 32(1) and 32(1C) together, it postulates a situation that the Land Administrator has to make the application and deposit the amount awarded into the court on or before the due date. In the event the Land Administrator fails to do so, late payment charges shall be imposed on the Land Administrator. (paras 27-29)

(3) In the present case, the notice in Form H was served on 19 August 2015 and based on s. 32(1C) of the LAA, three months after the service of Form H ended on 18 November 2015 and thus, the due date was on 18 November 2015. The time from the date the first defendant was made aware of the dispute to the due date, which was between 15 September 2015 and 18 November 2015, was approximately two months. There was ample time for the first defendant to make an application to deposit the compensation amount with the court before the due date, but the first defendant did not take immediate action after being made aware of the dispute. (paras 30, 34 & 35)

(4) The first defendant applied to the court to deposit the compensation amount on 30 December 2015, which was after the due date and obtained the court order on 21 January 2016. The compensation amount was finally paid to the plaintiff on 24 June 2016. The total number of days of delay in the payment of the compensation amount was 219 days. Based on the decision in *Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman*, the plaintiff was automatically entitled to late payment charges at the rate of 8% per annum from the due date until the date payment was made, in the sum of RM83,535.65. (paras 33, 36 & 38)

A **Case(s) referred to:**
*Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman [2010] 9 CLJ 810 CA **(foll)***

Legislation referred to:
Land Acquisition Act 1960, s. 16, 22, 29(1)(c), (2), 32(1), (1C)
B Rules of Court 2012, O. 14A

For the plaintiff - Haffirrudin Osman; M/s Haffirrudin Osman & Co
For the defendants - Abdul Malik Ayob; Assistant Legal Advisor, Johor

Reported by S Barathi

C

JUDGMENT

Choo Kah Sing JC:

Introduction

D **[1]** This case concerns a late payment charges claim pursuant to s. 32 of the Land Acquisition Act 1960 (Act 486), and it calls upon this court to consider the applicability of the provision concerned.

[2] On 16 November 2016, the plaintiff filed a notice of application (encl. 9) under O. 14A of the Rules of Court 2012. A question of law was
E framed for determination to finally determine the entire claim without a full trial. The question of law is as follows:

> Adakah Plaintif di bawah Seksyen 32(1) di baca bersama sub-seksyen (1c) Akta Pengambilan Tanah 1960 berhak kepada caj bayaran terlewat berjumlah RM83,526.60 apabila Defendan Pertama membayar wang
F award pampasan tanah 219 hari selepas "due date" atau secara alternatifnya Mahkamah menentukan mana-mana soalan yang difikirkan sesuai tanpa perbicaraan penuh.

[3] On 19 April 2017, this court held in favour of the plaintiff's claim, and late payment charges were awarded. This judgment serves as the reasons for
G its decision. The reasons are set down as below.

Brief Facts

[4] Sometime in 2005, a land acquisition exercise was carried out by the first defendant. The acquisition involved a piece of land known as Lot 2304,
H GM 1609, Mukim Tanjung Kupang, Daerah Johor Bahru.

[5] On 19 August 2015, an enquiry was held at the Johor Bahru Land Office to determine the compensation amount. The Land Administrator awarded a sum of RM1,740,326.25 (hereinafter referred to as 'the compensation amount').

I

[6] Pursuant to s. 16 of the Act, the Land Administrator is required to serve a notice under Form H to the owner. The notice in Form H is to inform the owner of the offered compensation amount. In the present case, a notice in Form H was issued to and served on one Zainal bin Samad on the same day after the enquiry ended, ie, on 19 August 2015.

[7] Pursuant to s. 22 of the Act, the Land Administrator is required to serve a notice under Form K to the owner. The notice in Form K is to inform the owner the actual date of taking possession of the scheduled land. In the present case, a notice in Form K was issued, and the date of taking possession was on 20 November 2015.

[8] In September 2015, the plaintiff through its firm of solicitors Messrs Haffirrudin Osman & Co wrote a letter dated 10 September 2015 to the first defendant. The said letter reached the first defendant on 15 September 2015.

[9] In the said solicitors' letter, the plaintiff requested the first defendant to withhold payment of the compensation amount to Zainal bin Samad. The plaintiff asserted that it was the rightful owner of the land because the plaintiff had purchased the said land from Zainal bin Samad on 11 May 2015. The relevant authority's consent to transfer ownership of the said land was obtained only on 7 September 2015. The plaintiff, therefore, asserted the compensation amount ought to be paid to the plaintiff, not Zainal bin Samad.

[10] The plaintiff took out a civil suit against Zainal bin Samad *via* suit number 22NCVC-186-11-2015 in November 2015. The suit was to determine who the rightful owner of the said land was and who should be entitled to the compensation amount.

[11] On 20 March 2016, the plaintiff and Zainal bin Samad entered into a consent judgment. The plaintiff and Zainal bin Samad agreed, *inter alia*, that the compensation amount was to be paid to the plaintiff's solicitors by the Land Administrator within 30 days from the date of the consent judgment.

[12] Based on the consent judgment dated 20 March 2016, the plaintiff proceeded to file an originating summons *via* suit number JA-24NCVC-215-4-2016. In the originating summons, the plaintiff sought, *inter alia*, the compensation amount which had been deposited into the court pursuant to s. 29(1)(c) of the Act to be withdrawn from the court and paid to the plaintiff's solicitors. An order of the court directing the compensation amount be withdrawn from the court and paid to the plaintiff's solicitors was obtained on 21 April 2016.

[13] On 27 April 2016, the plaintiff's solicitors served the court order dated 21 April 2016 to the court Registrar. The plaintiff's solicitors requested for the compensation amount to be paid out as per the said court order. The court Registrar informed the plaintiff's solicitors that no such compensation amount was deposited with the court. The plaintiff was then asked to refer the matter to the first defendant for clarification.

A **[14]** The plaintiff's solicitors, upon checking with the first defendant, discovered that the compensation amount was not deposited with the court, neither was it paid to Zainal bin Samad.

[15] On 24 June 2016, the first defendant paid the compensation amount to the plaintiff/plaintiff's solicitors.

B

[16] The plaintiff contended that the first defendant ought to have deposited the compensation amount with the court upon being made aware that there was a dispute over the entitlement of the compensation amount. The first defendant had failed to deposit the compensation amount into the court as it was required to under s. 29(2) of the Act, therefore, the first defendant was liable to pay late payment charges as stipulated in s. 32 of the Act, the plaintiff's solicitors argued.

C

[17] The first defendant contended that it had attempted to pay the compensation amount into the court. On 30 December 2015, the first defendant had filed an originating summons *via* suit number 24NCVC-837-12-2015 to obtain a court order to deposit the compensation amount with the court. On 21 January 2016, the first defendant obtained a court order to do so. In the course of this proceeding, learned counsel for the first defendant conceded that the compensation amount in fact was not deposited with the court.

D

E

[18] Learned counsel for the defendants informed this court that on 30 March 2016, the first defendant attempted to deposit the compensation amount by way of a cheque dated 27 October 2015 into the court. But, the said cheque was rejected and returned to the first defendant because of an issue with validity of the cheque. The first defendant did not present a fresh cheque to the court after that.

F

[19] The first defendant only paid the compensation amount directly to the plaintiff on 24 June 2016.

G

The Findings Of This Court

[20] Learned counsel for the defendants attempted to redefine the issues for determination by this court. This court was not amenable to the attempt. This is because, firstly, encl. 9 was filed by the plaintiff, not the defendants. Secondly, all the crucial facts as pleaded are not disputed. Thirdly, this court is of the considered view that this is a case suitable to be finally disposed under O. 14A of the Rules of Court. Lastly, the question of law, in the opinion of this court, if answered by this court, is sufficient to dispose of the plaintiff's claim.

H

[21] In gist, the question of law framed by the plaintiff revolves around the interpretation of s. 32 of the Act - when is s. 32 of the Act applicable, and whether the first defendant had failed to comply with it?

I

[22] Section 32 of the Act states as follows:

> 32. Late payment charges
>
> (1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before the due date, the Land Administrator shall pay the amount awarded with late payment charges thereon at the rate of eight percent per annum from the due date until the time of such payment or deposit.

[23] The chief words in the aforementioned provision lie within the sentence "… the Land Administrator shall pay the amount awarded with late payment charges …" The word "shall" connotes a statutory and obligatory duty. In other words, the provision imposes on the Land Administrator a statutory duty to pay not just the amount awarded, but also to pay the late payment charges in the event either one of the two scenarios is applicable.

[24] The first scenario is when the Land Administrator fails to pay the compensation award to the entitled person on or before the due date. The second scenario is when the Land Administrator fails to deposit the compensation award with the court on or before the due date.

[25] The meaning of 'due date' is explained in s. 32(1C) of the Act which states as follows:

> (1c) In this section "due date" in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under section 16(1) in respect of the land, whichever is the earlier.

[26] When will the two scenarios mentioned earlier arise? The answer can be found in s. 29 of the Act which states as follows:

> 29. Payment of compensation or deposit in Court
>
> (1) After a notice of award in Form H has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each amount awarded to the person entitled thereto unless -
>
> (a) there shall be no person competent to receive such payment;
>
> (b) the person entitled thereto does not consent to receive the amount awarded; or
>
> (c) there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.
>
> (2) In the cases referred to in subsection (1)(a), (b) and (c) the Land Administrator shall apply *ex parte* to the Registrar of the Court in chambers, supported by affidavit, for an order to deposit the amount awarded into Court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the Registrar shall have power to make such order.

A **[27]** Section 29 of the Act explicitly states as soon as may be after the service of Form H, the payment of the amount awarded has to be made to the person entitled. The meaning of 'as soon as may be' has been lucidly explained in the decision of the Court of Appeal in *Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman* [2010] 9 CLJ 810.

B **[28]** In the event the Land Administrator cannot determine who the entitled person is, then the Land Administrator is required under s. 29(2) of the Act to apply to the Registrar of the court to deposit the awarded amount with the court.

C **[29]** This court observes that there is no time frame mentioned in the provision for the Land Administrator to apply to the court to deposit the awarded amount with the court. However, reading ss. 29(2), 32(1) and 32(1C) together, it postulates a situation that the Land Administrator has to make the application and deposit the amount awarded into the court on or before the due date. In the event the Land Administrator fails to do so, late
D payment charges shall be imposed on the Land Administrator.

[30] In this present case, the notice in Form H was served on 19 August 2015, and based on s. 32(1C) of the Act, three months after the service of Form H ended on 18 November 2015. The date of taking possession was on
E 20 November 2015 (see Form K), therefore, 18 November 2015 is two days earlier than 20 November 2015. This means the due date in this present case was on 18 November 2015.

[31] After the service of Form H on 19 August 2015, almost a month later, on 15 September 2015, the first defendant received the plaintiff's solicitor's
F letter pertaining to a dispute of right and entitlement of the compensation amount between the plaintiff and Zainal bin Samad.

[32] It is the considered view of this court that when there is a dispute as to the right or title of the person to receive the compensation amount, the Land Administrator is immediately obligated under s. 29(2) of the Act to
G apply to the Registrar of the court to deposit the amount awarded with the court. Section 29(2) of the Act states clearly that the Land Administrator shall apply *ex parte* to the Registrar for an order to deposit the amount awarded into court.

[33] On the present fact, the first defendant applied to the court to deposit
H the compensation amount on 30 December 2015, which was after the due date, ie, 18 November 2015. The first defendant only obtained the court order on 21 January 2016.

[34] The time from the date the first defendant was made aware of the dispute to the due date, which is between 15 September 2015 and
I 18 November 2015, was approximately two months. It is the considered

view of this court that there was ample time for the first defendant to make an application to the Registrar of the court to deposit the compensation amount with the court before the due date.

[35] In the event the first defendant had made the application earlier, ie, right after being made aware of the dispute, the first defendant could have enough time to deposit the compensation amount on or before the due date. The first defendant could have avoided late payment charges if the first defendant had taken swift action to comply with s. 29(2) of the Act. The first defendant only made the application on 30 December 2015, after the due date. This clearly shows that the first defendant did not take immediate action after being made aware of the dispute.

[36] The compensation amount was finally paid to the plaintiff on 24 June 2016. Therefore, the number of days of delay in the payment of the compensation amount between 18 November 2015 (due date) and 24 June 2016 (payment date) are 219 days in total.

[37] In *Ismail Bakar & Ors (supra)*, the Court of Appeal at p. 824 states:

> … it is clear that under s. 32 there is an automatic right to be paid late payment charges as long as there has been a delay in making compensation payment by the Land Administrator. Under s. 32 there is no necessity for the appellants [the landowner in the case] to make a claim for late payment charges. The entitlement to late payment charges is as of right and is immediate.

[38] Based on the above legal proposition, the plaintiff is automatically entitled to late payment charges at the rate of 8% per annum from the due date until the date payment is made. Hence, the late payment interest is tabulated as below:

$$8\% \times RM1{,}740{,}326.25 \times \frac{219}{365} = RM83{,}535.65$$

Conclusion

[39] Based on the above reasoning, this court allowed the plaintiff's claim.